

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
07 EDC 1074

COUNTY OF MECKLENBURG

Student by Parent or Guardian, *Father* and
Mother,
Petitioner,

vs.

Charlotte-Mecklenburg Schools,
Respondent.

**PROPOSED DECISION
ORDER OF VOLUNTARY
DISMISSAL**

THIS MATTER came on for hearing on August 28, 2007 before the Honorable Selina M. Brooks, Administrative Law Judge, with Petitioners *Father* and *Mother*, appearing pro se and James G. Middlebrooks, Esq., appearing on behalf of Respondent.

1. The hearing began with opening statements made by *Father* on behalf of Petitioners and by James Middlebrooks, followed by testimony of Petitioners' witness, *Mr. W.M.*.
2. During the course of *Mr. W.M.*'s testimony, the Undersigned called a one-hour recess at noon.
3. After the noontime recess, the Undersigned recalled *Mr. W.M.* to the witness stand to resume his testimony upon direct examination by Petitioner *Father*.
4. At this point, Petitioner *Father* made an oral motion to withdraw the petition, representing that it was his intention to take a voluntary dismissal without prejudice. He also represented that he was taking the dismissal voluntarily and had not been pressured by anyone to do so.
5. Petitioner *Mother* represented to the Undersigned that she joined the motion to withdraw the petition, that she was taking this action voluntarily and had not been pressured by anyone to do so.
6. Pursuant to Rule 41(a) "(1)...an action or any claim...may be dismissed by the plaintiff without order of the court (i) by filing a notice of dismissal at any time before the plaintiff rests his case" or "(2)...an action or any claim therein shall not be dismissed at the plaintiff's instance save upon order of the judge and upon such terms and conditions as justice requires."
7. Petitioners' oral statements of intent to withdraw the petition do not comply with the requirement of Rule 41(a) that a notice of dismissal be in writing.

8. The Undersigned must consider what terms and conditions may be just for the issuance of an order granting voluntary dismissal.

THEREFORE, after consideration of the facts, circumstances, and nature of this proceeding, the Undersigned DECIDES as follows:

THAT the parties have fifteen days from the date of this Order to file any supplemental motions for reconsideration of the motion for voluntary dismissal; and

THAT if no supplemental motions are filed by said date, then the Undersigned will issue a Final Decision Order of Voluntary Dismissal.

IT IS SO ORDERED,

This the 30th day of August, 2007.

The Honorable Selina M. Brooks
Administrative Law Judge